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Kirk R. Ruthenberg
202-408-6410
krr@sonnenschein.com

1301 K Street N.W.
Suite 600, East Tower
Washington, D.C. 20005
202.408.6400
202.408.6399 fax
www.sonnenschein.com

Chicago
Kansas City
Los Angeles
New York
San Francisco
St. Louis
Washington, D.C.

April 24, 2001

VIA HAND DELIVERY

Ms. Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street S.W., TW-B402
Washington, DC 20554

RECEIVED

APR 24 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Re: Comments Provided by Ionex Communications, Inc. in Opposition to
Southwestern Bell Telephone Company's Request for Authorization Under
Section 271 of the Communications Act to Provide In-Region, InterLATA
Service in the State of Missouri CC Docket No. 01-88

Dear Ms. Salas:

Earlier today we filed with the Commission the original, four copies, and one 3.5 inch diskette of the above-referenced document. The required copies of this document have been sent to the Common Carrier Bureau and the International Transcription Service. The docket number on those documents should have been listed as Docket No. 01-88, instead of 01-81. Please correct your records accordingly.

Please return one file-stamped copy of this document in the envelope enclosed for that purpose. If you should have any question, please do not hesitate to contact me. Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

SONNENSCHN NATH & ROSENTHAL

By:


Kirk R. Ruthenberg

Enclosures

cc: Janice Myles (w encl.)
International Transcription Service (w/encl.)

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

RECEIVED

APR 24 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

IN THE MATTER OF

**APPLICATION OF SBC COMMUNICATIONS, INC.,
SOUTHWESTERN BELL TELEPHONE COMPANY,
AND SOUTHWESTERN BELL COMMUNICATIONS
SERVICES, INC. d/b/a SOUTHWESTERN BELL
LONG DISTANCE FOR PROVISION OF IN-REGION,
INTERLATA SERVICES IN MISSOURI**

**CC DOCKET NO.
01-81**

**COMMENTS PROVIDED BY IONEX
COMMUNICATIONS, INC. IN OPPOSITION TO
SOUTHWESTERN BELL TELEPHONE COMPANY'S
REQUEST FOR AUTHORIZATION UNDER SECTION 271 OF THE
COMMUNICATIONS ACT TO PROVIDE IN-REGION, INTERLATA
SERVICE IN THE STATE OF MISSOURI**

COMES NOW Ionex Communications, Inc. ("Ionex"), by and through its attorneys, and hereby provides the following comments in opposition to Southwestern Bell Telephone Company's ("SWBT") application for authority under Section 271 of the Communications Act to provide interLATA service in Missouri:

Ionex holds certification from the Missouri Public Service Commission ("the Missouri PSC") to provide interexchange services throughout Missouri and local exchange services to businesses. The Missouri PSC has also approved interconnection agreements between Ionex and SWBT, and Ionex has ordered Unbundled Networks Elements from SWBT and resold SWBT services in Missouri for several years.

These Comments demonstrate that SWBT has failed to provide Ionex UNE-P and service for resale on a consistently reliable basis. SWBT has been slow and unresponsive in making customer cutovers under both UNE-Platform and resale regimes, and Ionex has found that when

SWBT makes those customer cutovers, various features of service are dropped, and dial tone is lost. SWBT's failure to meet its cutover obligations has often hampered Ionex in providing service to its customers, who have blamed Ionex for these problems. Ionex has dealt with significant customer service obligations, simply to retain the customers.

Finally, and perhaps most problematical, SWBT appears not to have taken Ionex's concerns seriously. When Ionex has notified SWBT of problems with cutovers, SWBT has failed to respond in a timely, businesslike manner. All too often, Ionex must escalate the problems above its assigned SWBT account executives, and even then SWBT has proved to be unresponsive. Ionex is concerned that the only effective weapon it has in getting and holding SWBT's attention is a threat of complaint to the state regulatory commissions. Ionex has had to take that route in Kansas, where it has a pending complaint against SWBT for refusing to apply the proper UNE-P rates determined by the Kansas Corporation Commission and incorporated by the interconnection agreements between Ionex and SWBT. Ionex sees the same phenomenon in Missouri.

Ionex's concerns are outlined in greater detail below. In light of the issues which Ionex raises, which go directly to the nature of the relationship required for Section 271 authority, Ionex requests that the Commission deny Section 271 authority for SWBT in Missouri.

A. FAILURE TO PROVIDE ALL FEATURES AND DIAL TONE UPON CUSTOMER CUTOVER

The key moment in the relationship between a CLEC and its customer is when the customer's service is shifted from the incumbent to the CLEC. If the cutover does not go smoothly, the customer will almost always blame the CLEC, irretrievably damaging the relationship. The problems which Ionex has experienced with customer cutovers have caused Ionex to devote substantial time and resources to customer care efforts and remonstrations with

SWBT. This would demonstrate SWBT's failure to meet the requirements of 47 U.S.C.

§ 271(c)(2)(B)(ii), at least in practice. Given its experience with SWBT, Ionex does not believe that the Missouri Commission's recommendation concerning SWBT's Section 271 application is supported by the experience of CLECs.

The Missouri Commission conducted an extensive hearing on SWBT's compliance with the Section 271 checklist in March, 1999. Although substantial evidence was introduced at that hearing concerning SWBT's failure to comply with many elements of the checklist, it does not appear that the Missouri Commission ever made any factual findings concerning that evidence. In June, 1999, it simply asked its Staff to prepare performance measurements to determine SWBT's compliance with the checklist. The Missouri Commission's substantive order on SWBT's application, issued on March 15, 2001, deals with the Missouri Interconnection Agreement (the M2A), not with the evidence introduced more than two years ago at the hearing.

Ionex's experience with SWBT's unacceptable performance of customer cutovers includes the following situations, which are simply illustrative of the problems which Ionex has encountered. Exhibit A is a memorandum dated February 21, 2001, indicating that SWBT had rejected an order in error, but before the problem with the order could be resolved, another SWBT department ordered the line in question disconnected, which would leave the customer without service. Exhibit B, dated March 20, 2001, indicates that a cutover error by SWBT in entering the telephone number caused a new Ionex customer to lose dial tone. In both cases, the customer lost service, and most likely blamed the new provider, Ionex, for the problem.

The Missouri Commission found that the M2A meets the requirements of providing "nondiscriminatory access to network elements" as required by Sections 271(c)(2)(B)(ii) and 251(c)(3). This may be true in theory, but it is Ionex's experience that nondiscriminatory access is not available in practice. The problems with customer cutovers demonstrate that SWBT has

simply not implemented procedures which allow for smooth and reliable conversions. Ionex maintains that until SWBT demonstrates that it can provide cutovers seamlessly and reliably, the problems for CLECs will continue and SWBT should not be allowed to consolidate its hold on local exchange customers through the provision of interLATA long distance in Missouri.

**B. FAILURE TO PROCESS UNE-P AND RESALE CONVERSIONS
IN A TIMELY MANNER**

Ionex has also experienced problems with SWBT failing to meet its promised intervals in providing customer cutovers. As the Commission well understands, RBOC failure to meet its promised intervals on conversions can and does substantially prejudice the CLEC to which the customer is moving. As noted above, any customer problems which arise at the time of conversion are invariably attributed to the CLEC. These problems infect the relationship between the CLEC and its customer, often irreparably. The problems with the timing of cutovers outlined below again demonstrates a failure to meet the requirements of Section 271(c)(2)(B)(ii), and in the resale context show noncompliance with Section 271(c)(2)(B)(xiv).

A CLEC must be able to meet the service dates it promises to new customers, and those dates in turn rely on the RBOC's ability to meet the cutover intervals promised to the CLEC. SWBT has consistently failed to meet its interval commitments to Ionex. Examples of these problems include the SWBT errors memorialized in Exhibits C through I to these Comments.

Exhibit C: SWBT's error in wrongfully rejecting an Ionex order caused Ionex to miss a promised service date to a new customer;

Exhibit D: Two SWBT employees disagreed as to whether Ionex's order contained a correct due date (it did), causing a delayed cutover;

Exhibit E: the SWBT employee admitted that she mistook the type of order, causing an improper rejection of the order;

Exhibit F: the SWBT's employees instructions as to how an order should be entered caused it to be rejected, delaying the cutover;

Exhibit G: the SWBT employee advised Ionex that this order had been erroneously rejected for failing to include a directory listing page, which is not a required entry;

Exhibit H: the SWBT employee contacted about this order simply could find no reason for its rejection; and

Exhibit I: this order was rejected because “and” was used between two customer names, rather than an ampersand.

Although SWBT does eventually provide customer conversions for Ionex, it is the consistent delay in doing so which makes Ionex’s competitive situation difficult, and which demonstrates SWBT’s failure to fulfill that element of the competitive checklist. The situation has been such that Ionex cannot rely on SWBT to make conversions when promised; sometimes SWBT meets the date, other times it fails to. Because of SWBT’s performance shortcomings, Ionex is not secure in its ability to tell customers when cutovers will occur, which reflects poorly on Ionex’s ability to deliver to its customers.

Again, the Missouri Commission failed to make findings on the evidence in March, 1999, concerning SWBT’s failure to meet its interval commitments. The M2A supposedly takes care of this issue, at least in the eyes of the Missouri Commission. However, the practical experience of Ionex and other CLECs is that SWBT has ongoing problems meeting its intervals. Until SWBT proves that it will cut customers over in a timely fashion, this Commission should not grant Section 271 authority.

**C. SWBT’S UNRESPONSIVENESS WHEN CONFRONTED
WITH PROBLEMS CREATED BY ITS FAILURE
TO PROVIDE IONEX WITH RELIABLE CONVERSIONS**

Ionex’s frustration with SWBT has been compounded by SWBT’s unresponsive attitude. Ionex has confronted SWBT on many occasions concerning incorrect UNE-P rates, slow and problematical customer conversions, dropped services, and missed intervals. SWBT’s response

has been nearly always unsatisfactory, and more to the point, slow. Ionex has found that SWBT will not respond until Ionex takes its complaints to higher management. This constitutes an unnecessary use of limited management resources for both companies. Until SWBT demonstrates that it will treat CLECs such as Ionex like customers and not competitors, SWBT should not have Section 271 authority in Missouri.

As examples of SWBT's slow response (indeed, non-response) to an Ionex problem in Missouri, Ionex points to the following situations:

Exhibit J: SWBT rejected this order because it contained an incorrect ACNA, a reason for which no order is to be rejected;

Exhibit K: this order was also rejected for failure to include an accurate ACNA, but in this case SWBT's LSC refused to type "24C" on an order, resulting in its rejection; and

Exhibit L: an employee at SWBT's LSC failed to return a telephone inquiry from Ionex concerning a delayed conversion.

Ionex has previously informed the Commission of SWBT's unresponsive attitude. In its Comments in Docket No. 00-217 (SWBT's Application for Section 271 authority in Kansas and Oklahoma), Ionex provided a detailed recitation of its difficulties with SWBT's failure to apply correct UNE-P rates in Kansas. This issue is still alive today, in the form of a complaint before the Kansas Corporation Commission, Case No. 01-SWBT-344-COM. Ionex's concern is that SWBT reflexively denies it is acting improperly, compelling Ionex to move up the chain of command before receiving a serious response to its complaints. Ionex is deeply concerned the Section 271 authority would reduce further any incentive SWBT might now have to deal with CLECs in a responsible manner.

D. CONCLUSION

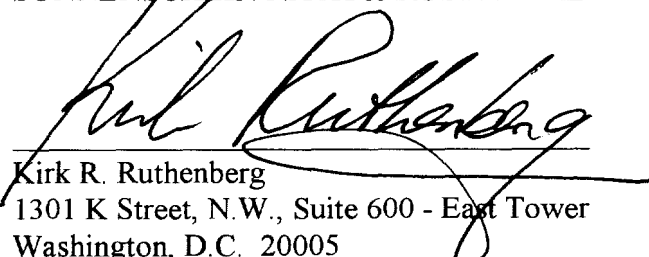
In light of the information contained in these Comments, Ionex requests that the Commission find that SWBT has failed to comply with all of the elements of the competitive checklist. Specifically, Ionex believes that SWBT's actions demonstrate that it has failed to

comply with Section 271(c)(2)(B)(ii) and (xiv), in its provision of UNE-P and lines for resale.

Granting Section 271 authority at this time is not supported by the evidence presented to the Missouri Public Service Commission and the findings of that Commission. Ionex requests that this Commission deny Section 271 authority to SWBT in Missouri.

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL



Kirk R. Ruthenberg
1301 K Street, N.W., Suite 600 - East Tower
Washington, D.C. 20005
Telephone: (202) 408-6400
Facsimile: (202) 408-6399

Mark P. Johnson
4520 Main Street, Suite 1100
Kansas City, Missouri 64111
Telephone: (816) 460-2400
Facsimile: (816) 531-7545

ATTORNEYS FOR IONEX COMMUNICATIONS, INC.

CERTIFICATE OF SERVICE

I hereby certify that the original and four copies of the above and foregoing were filed by hand on the 24th day of April, 2001 with:


Commission Secretary
Magalie Roman Salas
445 12th Street, S.W., CY-B402
Washington, D.C. 20554

With 12 copies delivered by hand on the same date to:

Janice Myles
Common Carrier Bureau
445 12th Street S.W., Room 5-B145
Washington, D.C. 20554

And one copy filed by hand on the same date with:

International Transcription Service (ITS)
445 12th Street S.W., Room CY-314
Washington, D.C. 20554



Attorney for Ionex Communications, Inc

Orders Rejected Incorrectly

PON # 00202RH-1200

SPOKE WITH: Tamaka

Date 2-21-01 Time 11:11am to 11:32am

NOTES:

Per Tamaka shared Russel
Rejected this order in EKKOR
while talking to Tamaka. I received
a call from Julie in the Compliance
Department requesting to disconnect
these line before the move order
is completed. I advised Julie
that the cust wanted these
lines disconnected ASAP.



LSG Typing Orders Rejected Incorrectly

PON # 1231808

SPOKE WITH: Tim

Date 3/20/01 Time _____

NOTES:

Tim was called because our order had both tns' 816.524.2225 + 2397 but when LSC typed it they left off 2225 so he re-typed giving me 0497730 + 1548516; a few min later cust called back and that tn (2225) no longer had dial tone.

* * * Attach copy of version that was rejected * * *



Incorrectly Rejected Orders

PON # 0112DF-0808

SPOKE WITH: Tammi

Date 2-01-01

Time 12:30

NOTES:

Tammi stated that this was their fault and since this was their fault the due date board was pushed back from 2.02.01 to 2.05.01. This order has an expedite on it and due to order being rejected it now has to wait for due date of later date.

C000824

make fns stand alone lines



Incorrectly Rejected Orders

PON # 0130FT-5006

SPOKE WITH: Melanie / David "Supervisor"

Date

Time

NOTES:

Order Manually reject for "incorrect due date" (per Verigate this is the next available due date! Melanie claimed Verigate was wrong and their due date said 2/6/01!

According to David "Supervisor" There was nothing wrong with the d.d of February 2nd! He will have the order typed

* * * Attach copy of version that was rejected * * *

Orders Rejected Incorrectly

PON # 0209 RH-7471

SPOKE WITH: Jessie & Melonie

Date 2-9-01 Time 2:00 PM

NOTES:

Melonie stated she rejected this order per she thought it was a conversion - did not take the time to see what type of order it really was.

* * * Attach copy of version that was rejected * * *



Orders Rejected Incorrectly

PON # 0226RN-5384

SPOKE WITH: Bryce

Date 3/2/01 Time 8:30 am

NOTES:

Bryce said that for this order I need to have activity as a new install and I don't need to address all of the numbers on the loop w/ port page, only the number I am adding. This is incorrect since the system will reject it back to me if I do this.

* Per Jared/Mike order will be worked. 4:37pm 3/2

Orders Rejected Incorrectly

PON # 03DIFT-4169

SPOKE WITH: Mary

Date 3/2/01 Time 1:00pm

NOTES:

Order rejected saying invalid data. Called and talked with Mary. Notes on reject sayin do not need directory listing page. Advised a new line was being added and it needed some kind of listing. Mary advised rejected in error and will have rep type order!

* * * Attach copy of version that was rejected * * *



Exhibit H



Orders Rejected Incorrectly

PON # 0307 RH-1151

SPOKE WITH: Meia F.

Date 3-07-01

Time @ 2:00pm to 2:25pm

NOTES:

Per Meia she could not see
any reason why order was rejected
and she would type order.

* * * Attach copy of version that was rejected * * *



EXHIBIT I

Orders Rejected Incorrectly

PON # 0327FT-9144

SPOKE WITH: Mark

Date 3/28/01

Time 8:00am

NOTES:

Rep. rejected saying invalid character in end user page. Advised that anytime a dual name listing is present, the system will only accept an ampersand. If a word and the word "and" is type system errors saying ampersand is needed. Mark advised he will bring this to Crep and to include notes in remarks!

* * * Attach copy of version that was rejected * * *



EXHIBIT J

Incorrectly Rejected Orders

PON # 0130FT-5006

SPOKE WITH: K.C. Adams

Date 1/30/01 Time 4:30 pm

NOTES:

Order rejected for incorrect Acna, Acna
in notes and they are not supposed to reject
for Acna!

i PAT rejected order!



Orders Rejected Incorrectly

PON # D228FT-3325

SPOKE WITH: Sharol

Date 3/1/01

Time 8:24 AM

NOTES:

Rejected for ACNA Z4C (Z1Z in ACNA).
Sharol advised she would have crep type
Order

Called LSC order rejected again for same reason.
Per Jarrod at LSC, this order will not be typed
until we put Z4C in the ACNA because
our systems have been updated with the correct
information.

* * * Attach copy of version that was rejected * * *



Orders Rejected Incorrectly

PON # _____

SPOKE WITH: Janice, Kelsey, Tonya, Jarrod + Mike

Date 4/23/01

Time 2:00

NOTES:

Called Janice @ SWB repair and she tested an open out balance, couldn't put in a repair ticket per orders had not completed. Looked @ conversion orders & noticed that the cable pair had been changed during conversion and she asked that I call the LSC.

Called LSC spoke to Kelsey who transferred me to Tonya, she got a call back number, took info and never called back. (11:42)

Called Jarrod... he & Mike matched D+C orders, saw that cable pair had been switched, contacted facilities & had them correct this... eta 30min/1 hour (1:00)

- Did a test call @ 2:00

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2 DISKETTE